



Juvenile Law Commission

September 10, 2003

Commission Members Present

Cheryl Sullivan
John Boyce
Susan Carpenter
Pam Cline
Cathy Danyluk
Bruce Donaldson
Roger Duvall
Ralph Foley
Robert Kuzman
Joseph Koenig
David Long
James Payne
Robert Rucker
Viola Taliaferro

Commission Members Absent

Melvin Carraway
Glenn Howard
Larry Landis
Chessie Smith Hacker
Diane Weiss-Bradley
Connie Windhorst

Staff Present

Micah Cox
Nikki Kincaid

Contract Staff Present

Laurie Elliott
Jim Hmurovich

Guests

Amy Karozos

Agency

JLC Chair/IUPUI
FSSA
State Public Defender
DOC (for Evelyn Ridley-Turner)
IDOE (for Bob Marra)
JJTF
Scott County Prosecutor
House of Representatives
House of Representatives
ICJI
Senate
Marion Superior Court, Juvenile Div.
Indiana Supreme Court
Monroe Circuit Court

Agency

Indiana State Police
Senate
Public Defender Association
Youth Representative
Lake Co. Juvenile Court Probation
Parent Representative

Agency

ICJI
ICJI

Agency

Children's Law Center
Consultant

Agency

State Public Defender's Office

I. Call to Order

JLC Chair Cheryl Sullivan called meeting to order at 9:08. Reviewed next meeting dates and locations. Revisited charge of the group and the executive order from the Governor, indicating that the group will continue beyond the end of the year. Discussed the proposed format of the meetings and need for members (and designees) to come prepared to vote on issues.

II. Approval of Minutes

Minutes of July 30, 2003 meeting were distributed via e-mail and mail prior to meeting and distributed via handout for review. Minutes approved by consensus without changes or additions.

III. Presentation/Discussion of Family Court Models

Chair recognized Judge James Payne of Marion County Superior Court, Juvenile Division and Judge Viola Taliaferro of Monroe Circuit Court to present information on their Family Court Models.

Judge Payne introduced Marion County Family Court Model. Indicated that the Supreme Court, Family Court Project was initiated with 3 original projects and then added more courts. Marion County is part of the added projects. Each family court is slightly different based on size and climate of court and county. Handout “The Marion County Family Court Project: Unity For Families in Marion County” distributed and Judge Payne described the Marion County model. Marion County uses a “bundling” model in attempt to avoid redundancy in court actions for families involved in multiple court hearings in different courts. Judge Payne indicated that this provides families with consistency in court orders and reduces burden on families attempting to meet multiple court order requirements (see handout for further detail). Judge Payne indicated that an important aspect is working with the local Bar Association to address concerns by attorneys regarding the bundling of cases and one judge hearing multiple actions. He further indicated that the Marion County model is probably the least intrusive model for Family Court and requires the least amount of change for the courts.

Judge Payne referred to an upcoming National Family Court Association meeting where the multiple family court models will be discussed and information shared regarding the success of family courts. He indicated that this is no longer a fringe issue – family court has become mainstream and can change the structure and where court is actually “done” – citing the creation of a Family Court Building in Louisville, Kentucky.

Judge Payne briefly described the “One Family-One Judge Model” used in smaller counties (<35,000) counties; larger counties find this model more difficult to assimilate. Court and services in this model are coordinated in one place – described as “weaving” all actions together to achieve the goal of family court, “Therapeutic Justice”. He described this as attempting to enhance the skills of families in court so that they are capable of complying with court orders. (i.e., parenting classes akin to driving school for speeding violators). Judge Payne discussed the ability of this model to provide services to families at the first point of entry helping to reinforce the image of the court as helpful and responsive – changing the culture of court to service orientation.

Judge Taliaferro presented the Family Court Model for Monroe County. She indicated that her court has been a de facto family court since approximately 1990 and that following a conference in Philadelphia in approximately 1998 the Indiana Family Court Project was launched in the first three

pilot counties: Johnson, Monroe and Porter. She discussed the Supreme Court's development of Family Court rules for Indiana and described the Monroe County model of "One Family-One Judge". Indicated that she is able to decide which cases are appropriate for family court and is able to take all types (CHINS, delinquency, paternity and in some cases criminal) while maintaining the integrity of the records of the different cases, but hearing them at the same time. Judge Taliaferro discussed that this allows consistency in court orders and reduces burden on child witnesses, for example. Indicates that this is not a "magic wand", but that it does reduce the number of times a family is required to appear in court, thus reducing the amount of time taken off from employment.

Judge Taliaferro introduced Mediation Clinic and Community Conflict Resolution Project as another important component of their family court project. Utilizes Indiana University Law students and pro bono work to provide mediation in difficult divorce and visitation cases.

Bruce Donaldson asked judges what legal barriers or statutory obstacles exist to implementing family courts.

Judge Taliaferro responded that the Supreme Court rules speak to the issue of removing statutory obstacles.

Justice Robert Rucker indicated that these are only two of the models; the current Supreme Court Family Court Project includes counties that represent 3-4 different models (Case Tracking, Mediation, One Judge and Bundling) and this is because not every shoe fits every foot – each county/court must determine what will best meet the needs of their families. He further indicated that the Supreme Court is always considering new models and that changes may need to be made to the rules to adjust for these new models.

Chair clarifies that rules pertain to currently operating models and asked what the process to change the current rules is – by petition to the Supreme Court?

Justice Rucker responded affirmatively.

Chair asked if any statutory changes are still necessary.

Justice Rucker indicated that none are needed at this time.

Judge Taliaferro concurred, indicating that the rules were changed in 1992 to include the new family court projects added to the Supreme Court pilot program.

Judge Payne introduced Francie Hill as the Supreme Court Family Court Project coordinator and an important resource on these issues. He further indicated that he feels there are some legislative changes that could be beneficial to the operation of family courts.

Chair indicated that guidance on possible statutory changes should be discussed at the October meeting.

Representative Robert Kuzman indicated that he works with the juvenile court in Lake County and asked Judge Taliaferro about the costs of the mediation and how this is paid.

Judge Taliaferro indicated that most of the clients are unable to pay for these costs and this is why they have implemented a clinic to provide the services for free.

Judge Rucker indicated that there are two family court projects in Lake County, but not certain if Judge Nicholas has a mediation model. Circuit Court is a mediation model and they utilize fundraising/pro bono to cover the costs – indicated that this requires coordination.

Judge Payne discussed a statewide case management system that could help to reduce conflicts in orders across courts and reduce barriers to services.

Judge Taliaferro indicated that funding/money is the biggest issue with regards to services because most of the families in family court cannot afford them. Providing a mediation clinic allows community members to become involved in the family court process and provides law students with valuable experience.

Chair asked whether the discussion of uniformity meant “statewide”.

Representative Kuzman responded affirmatively indicating the “juvenile justice system” must adopt family court concept.

Senator David Long introduced the Allen County pilot program that requires a \$20 fee in domestic cases to provide mediation for indigent families after a means test. Senator Long recognized the value of a mediation clinic utilizing law students, but urged that that successful mediators need to have extensive experience and training. He then asked whether there is a need for a statewide law to address covering the costs of professional mediation through court fees.

Judge Taliaferro responded by discussing the proposed ADR fund plan that has not yet been sent to the State Court Administrator’s office. Proposed \$20 fee on domestic cases to offset the costs of mediation. She indicated that she still supports the value of community involvement and development of interpersonal/mediation skills for law students within a clinic model.

Senator Long agreed that volunteer involvement is important, but indicated that it is asking too much to have all mediation be on a volunteer/pro-bono basis – having experience in mediation is extremely important and these changes should be made legislatively.

Chair indicated that further discussion will be necessary at the October meeting.

IV. Approval of Draft Changes to Juvenile Code

Chair recognized Nikki Kincaid and Laurie Elliott, JLC staff to introduce draft changes to the juvenile code related to the Juvenile Justice and Delinquency Prevention Act (JJDP) of 2002. Kincaid indicated that members had received outline concerning JJDP at July 30th meeting and copies of draft changes consistent with this outline via e-mail/mail and in the handouts. Indicated that this draft would have to be further investigated and refined by Legislative Services Agency, after review by the Governor’s Office. Kincaid introduced issue of defining status offenses, indicated that current code does not include definition or the word status offense. Draft provides a definition and addition of term status offense in other appropriate statutory cites. Discussed confusion that has ensued regarding the proper detention of status offenders and violations of the deinstitutionalization of status offenders (DSO) mandate of the JJDP (see “Proposed Changes to Juvenile Code: September 10, 2003” handout).

Representative Foley asked about the issue of non-compliance with DSO and the effect.

Kincaid responded that there are four core requirements to the JJDPa (DSO, jail removal, sight and sound separation and disproportionate minority contact) and that if out of compliance with any one of the requirements lose 20% of funding and required to devote remaining funds to returning to compliant status, thus eliminating funding for local delinquency prevention and intervention programs currently being funded.

Representative Foley discussed his opinions about truancy and the need for local jurisdictions to have the option to securely detain particularly difficult or repeat truants. He indicated that communities need the option of secure detention to address the issues of underage drinking/drug abuse and chronic truancy.

Kincaid referenced page 6 of the handout regarding 24 hour time period for secure detention of status offenders.

Representative Kuzman discussed the need to establish bond for juveniles, citing an example of an underage drinking party with 17 and 18 years olds arrested for underage drinking. Indicated that the 18 year old is able to bond out of jail within a few hours, while the 17 year old is held in detention until Monday morning. He further indicated that he does not believe that detention should be used to address the issue of truancy.

Chair asked that the proposed changes to the juvenile code handout be introduced in full before discussion.

Kincaid presented the proposed changes in their entirety including: definitions of facility types (secure vs. staff secure), juvenile detention criteria (age-based vs. jurisdictional based detention and co-located facility training requirements) (see handout).

Senator Long asked what these changes would cost counties, what effect this would have on sending kids out of county and whether these changes would require “retro-fitting” of any facilities.

Roger Duvall responded that these changes should help counties not burden them.

Senator Long indicated that this still does not address the issue of possible facility improvements that would be required.

Duvall explained how this could benefit Scott County by allowing them to have a co-located juvenile detention facility that would need to only have 6 or 7 beds attached to the adult jail rather than the cost of building a larger and unnecessary separate juvenile facility.

Susan Carpenter suggested that these are not radical changes to the juvenile code and that the changes would act to bring the juvenile code in line with the current “real-life” practices with regards to the detention of juveniles and ensure compliance with the JJDPa.

John Boyce asked whether these changes resolve the question of what funds will pay for the detention of juveniles (FSSA licensed facilities vs. DOC monitored facilities) and the exclusion of secure residential facilities under the JJDPa.

Kincaid responded that this does not resolve the issue, but rather introduces this as a very important compliance issue that is being faced by the State. Only those juveniles within secure residential facilities under civil commitment are exempt from protection under the JJDP. Those under juvenile court jurisdiction (i.e. CHINS, status offenders, delinquent) offenders must be held in accordance with both state and federal law.

Judge Payne indicated that he feels that we are discussing the details before we have discussed the philosophical/policy issues that must be resolved before statutory language changes can be proposed. He referenced page 2 of the handout indicating that he feels these are significant changes and need to know what the fiscal impact of these changes will be. Indicated that this is discussing the creation of a tiered system without understanding the fiscal implications or discussing the philosophical issues. He indicated that this is really about the funding and that if we are going to continue to commit to compliance with the JJDP then 50% of funding from OJJDP should go to the juvenile courts that administer the detention centers necessary to stay in compliance.

Kincaid clarified that the fiscal impacts are not discussed in the handout because a full fiscal analysis would need to be conducted by Legislative Services Agency should these draft changes be approved to move forward.

Judge Taliaferro asked that as the commission continues to look at these types of issues that a discussion of the jurisdiction of the juvenile court be included.

Chair asked whether there was a motion to approve the draft language.

Senator Long indicated that he did not feel comfortable approving the proposed language without an analysis of the fiscal impacts and asked whether Mark Goodpaster from Legislative Services Agency was present in the audience. Asked Mark Goodpaster if he would be able to begin looking into the fiscal impacts of the proposed changes.

Donaldson asked whether we are currently losing federal funding because of violations and whether all the proposed changes are required.

Kincaid responds that not all changes are required, but are included for the purposes of consistency and to reduce confusion.

Carpenter concurred indicating that we are always very close to having too many violations and losing all or a portion of the federal funds.

Chair asked whether the draft changes code be approved as written to be forwarded to LSA for further analysis and revision to be considered at the October meeting.

Senator Long wanted clarification that the proposed changes were not being formally adopted, only approved to be forwarded to LSA.

Chair concurred and asked for a motion.

Judge Taliaferro moved that the proposed changes be approved as presented to be forwarded to LSA for further analysis.

Carpenter seconded the motion.

Chair asked for any further discussion.

Joe Koenig asked if LSA could also review what other changes would result in the criminal and CHINS as a result of the proposed changes being approved.

Chair noted this request and called for vote. Motion passed.

V. Overview of Systems: Fiscal Overview of Children's Services

Chair recognized Jim Hmurovich, JLC consultant to present fiscal overview. Jim Hmurovich asked members to reference an amended handout "Budgets for Children's Services in SFY 02: By State Agency and Type of Service" with the corrected total amount on page 4. He indicated that the amounts included are budgeted amounts and should not be confused with appropriations or expenditures and to note that the following are not included: administrative funds for state agencies, probation user fees, private grants or foundation funds. Hmurovich discussed how the different areas of funding are labeled on the handout, including: (1) Prevention & Well-Being, (2) Community-Based Services, and (3) Institutional-Based Services. He noted that this does not determine quality of services provided; only the amount of funding budgeted and that this must be addressed elsewhere in the discussion of the bringing services to children and developing systems-of-care.

Chair had a point of clarification regarding what types of funding are included in the table – federal, state, and local. Asked that spreadsheet be provided to clarify the source of each of the different funding streams cited on the handout.

Senator Long asked that we determine how much of the funding included on the handout is "locked" – meaning whether or not the money can be used for multiple purposes and different areas. Indicated that we need to be able to gauge the flexibility of these funds.

Chair called for a short break.

VI. Guidance Regarding Potential Changes to Compulsory Attendance Law

Chair reconvened and recognized Micah Cox, JLC Staff, to present information regarding truancy and discussion of potential need for changes to the compulsory attendance law. Cox presented summary of handout regarding the attendance policies of three counties – Lake, Johnson and Greene. He indicated that while truancy is handled similarly among prosecutors and probation that attendance policies (truancy enforcement) varied widely between school corporations, both within the same county and across counties. Cox discussed DOE suggestion that schools define habitual truancy, but that it is up to the specific school corporation to determine this policy at the local level.

Cathy Danyluk, of Department of Education, concurred that this is in fact a local decision and further indicated that it can also vary from school to school as the interpretation of the corporation policy varies among principals.

Cox explained that the prosecutors handle the cases based on the policies of the school corporation leading to variation in enforcement.

Chair asked for further comments or discussion.

Judge Payne asked that it would at least be helpful to have consistency within a given county- citing example that it is generally the policy that student must have 8 unexcused absences before it is brought to the attention of the juvenile court- but the statute defines truancy as any unexcused absence. Also cited practice of schools to hold all truancy referrals until May.

Senator Long asked whether there needs to be a consistent definition that will guide school corporations and is this an area the commission should be addressing.

Chair summarized the discussion by stating that discussion during the next meeting would need to involve consistency in state law – how to link compulsory attendance statute, attendance policies and truancy definitions.

Judge Payne added that he would like to see legislative changes that would not allow suspensions for truancy.

Danyluk indicated that it has been the custom that school corporations retain local control over such policies and practices.

Judge Taliaferro concurred with Judge Payne indicating that truancy is a warning sign and about a need to help the student either through informal adjustment or truancy court, but not by expelling them.

Duvall indicated that the juvenile code is currently set up correctly to allow juvenile justice system to deal with truancy, but that the burden shifts to DOE and schools to better define and provide clear guidelines and rules regarding truancy, which may include clearer responsibilities and use of attendance officers.

Judge Taliaferro discussed moving the ADM date from November to January to ensure that students are kept in school longer to be included in the count for funding eligibility.

Both Senator Long and Representative Foley agreed. Representative Foley fully agreed that truancy is a red flag and that we must find a way to deal with truants, including active attendance officers. Described concern that when a defiant 14 year old is a habitual truant and expelled from school then this student is free to roam the streets during the day and committing crimes against the community. He indicated that we must be sure that they are options to work with habitual truants whether it is alternative schools or court programs.

Senator Long asked how clear is it that schools can and should collaborate with the juvenile courts – is there vagueness on what can or cannot be shared and does this need to be dealt with legislatively.

Judge Payne cited FERPA and indicated that the laws are clear that schools can share information with the juvenile court, but the problem is the willingness of the schools to follow this.

Senator Long then asked how do we need to address this.

Judge Taliaferro responded that it can take years to work out a local agreement with all county school corporations and the court regarding the appropriate information and procedures for sharing information, but that it can be done – at the local level, indicating that there are not statutory impediments to sharing information.

Senator Long then asked whether it is the lack of consistency among school policies.

Judge Payne responded affirmatively citing the different absence codes, computer programs and willingness to openly share information because of fear about performance-based measurements placed on schools that creates barriers to information-sharing.

Senator Long further discussed the link between the ADM date and level of state funding.

Danyluk indicated that DOE is not opposed, but would need to discuss the local impact.

Chair asked that DOE further investigate the impact.

Duvall indicated that it is important that the juvenile justice system be better able to intervene in the lives of truant elementary students.

Judge Payne cited case law, possibly out of Boone County, that pertains to the issues being discussed.

Judge Taliaferro concurred indicating that there is case law pertaining to the inability of juvenile courts to reinstate expelled students.

Chair recognized Judge Payne regarding issue of not allowing expulsions for truancy.

Judge Payne discussed the importance of schools being able to address the different/alternative learning styles of students who may not be thriving in traditional school setting- leading to truancy.

Judge Taliaferro concurred indicating that this speaks to the need for alternative schools so that students are in some form of a learning environment every day. Indicated that we need to return to the days when truancy officers were “rounding kids up” off the street and returning them to a school environment because we have a community responsibility and it is beneficial to the whole community that students be in a learning environment.

Judge Payne cited two types of expulsion – informal involves a principal informing a student that they have too many unexcused absences and will not graduate so they should consider not returning to school and then a formal expulsion proceeding.

Danyluk discussed the formal expulsion hearing procedures.

Chair called for further research on this issue and discussion at the next meeting.

Donaldson asks Judge Taliaferro whether students can opt to attend the alternative school.

Judge Taliaferro responds affirmatively, indicating that the juvenile court cannot order students into the alternative school.

Koenig asked whether she felt she should have the ability to place juveniles at the school.

Judge Taliaferro responded that juvenile courts should be given the ability to ensure that all kids are in school.

Judge Payne cited Texas as a model, with court run schools for expelled students.

Danyluk recommended that JLC utilize Gaylon Nettles as a resource in this area.

Chair asked that Mr. Nettles be invited to the October meeting.

VII. New Business

Chair asked for public comment from audience members.

Chair recognized Cathy Graham from IARCCA. Graham voiced concern about the effect that potential changes to juvenile code presented could have on the operations of residential facilities. She offered to provide suggestions so that changes would not diminish the necessary treatment that is being provided by these facilities.

Chair recognized Gabby Miles a parent. Miles described her son's situation explaining that he was diagnosed with emotional/mental disorders, but was turned down by Medicaid to receive treatment. She was told the only way to get treatment for him was to send him to juvenile court as a CHINS, but Medicaid still turned him down and now help has come too late. Miles voiced concern that children are not getting the services they need and appreciated the opportunity to speak to the group.

Chair recognized Jim Kellam of Indiana Youth Services Association (IYSA). Kellam spoke regarding the truancy issue agreeing with the judges that we need to continue to work on this issue. He cited Indiana as having the highest expulsion rate in the country and urged the JLC to consider the due process issues involved with truancy and expulsion in general.

Next meeting October 8th, 9:00 a.m. – 11:30 a.m., Conference Room B

Meeting Adjourned.